

## REMARKS

This amendment is submitted in order to respond to the Examiner's rejection of claims 82, 85 and 86 under 35 USC 112, first paragraph, and objection to claims 83 and 84 as dependent upon rejected base claim 82.

Applicant notes that there is no antecedent basis in their application for ATCC Deposit No. PTA 962 or the amino acid sequence encoded by the clone obtained from that strain. However, there is antecedent basis for strain ATCC 13032 WT (pEKO pyc) and for the amino acid sequence encoded by the clone obtained from that strain. See page 14, line 24 through page 15, line 10 of the original application (page 16, line 22 through page 17, line 10 of the substitute specification). Applicant maintains that the amino acid sequence encoded by the clone obtained from ATCC Deposit No. PTA 962 and the amino acid sequence encoded by the clone obtained from ATCC 13032 WT (pEKO pyc) are functionally equivalent and since the claims of U.S. Patent 6,403,351 contains claims directed to the isolated pyruvate polypeptide comprising the amino acid sequence encoded by the clone obtained in ATCC Deposit No. PTA 962, Applicant believes that he is entitled to submit a corresponding claim with respect to strain ATCC 13032 WT (pEKO pyc).

Since Applicant has shown antecedent basis in the specification for claims 82, 85 and 86 as currently presented, no rejection of these claims should be maintained under 35 USC 112, first paragraph as unsupported by the specification.

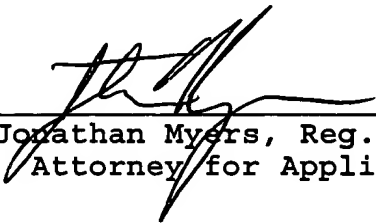


Applicant has also submitted new claims 87 through 90. Antecedent basis for these claims may be found in the original specification at the bottom of page 7 and at the top of page 9 and in original claims 25 through 28. Thus claims 64, 65, 70 through 78, and 81 through 90 are now in the application.

Applicant wishes to thank Examiner Steadman for his indication that claims 64, 65, 70 through 78 and 81 are allowable and it is hoped that in view of this amendment, all of the claims in the case will be considered to be in condition for allowance and that the interference can then proceed.

Applicant is enclosing a petition to obtain a three month extension of the term for response and authorization to charge the fee to the credit card of the undersigned attorneys.

Respectfully submitted,  
The Firm of Karl F. Ross P.C.



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Enc: Petition for Extension  
PTO 2038 Charge Form

8 July 2004  
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